



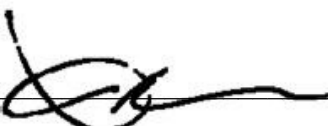
process at this time, it has not provided any measure by which to assess the value of avoiding such prejudice as being in excess of \$75,000, and the Court finds it is not likely to exceed \$75,000. Accordingly, the Court concludes that it lacks subject matter jurisdiction over this case because Plaintiff has failed to establish that the amount in controversy likely exceeds \$75,000.

In an abundance of caution should the Court's conclusion regarding jurisdiction be in error, the Court maintains its rulings made in open court that Plaintiff has failed to establish a likelihood of success on the merits. Plaintiff essentially argues that its insured may not invoke the appraisal provision in the insurance contract until it provides a detailed estimate of all loss suffered. But that is not the relevant standard. Rather, the standard is set forth in *In re Universal Underwriters of Texas Insurance Company*, 345 S.W.3d 404, 408 (Tex. 2011), in which the Texas Supreme Court held that the appraisal provision should be invoked within a reasonable time after the parties reach an impasse, which "is not the same as a disagreement about the amount of loss." The parties have clearly reached an impasse in this case. Defendant insured is seeking amounts far in excess than what Plaintiff insurer believes it is entitled to. Because Plaintiff failed to show a likelihood of success on the merits or sufficient prejudice to warrant a temporary restraining order, that motion is denied. Defendant's motion to dismiss for failure to state a claim (docket no. 7) remains likewise denied for the reasons stated in open court.

In conclusion, Plaintiff's motion for temporary restraining order (docket no. 6) is DENIED and Defendant's motion to dismiss (docket no. 7) is DENIED. This case is DISMISSED WITHOUT PREJUDICE for lack of jurisdiction.

It is so ORDERED.

SIGNED this 23rd day of January, 2017.

  
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XAVIER RODRIGUEZ  
UNITED STATES DISTRICT JUDGE